United Nations A/CN.9/SR.880

General Assembly

Distr.: General
13 August 2008

Original: English

United Nations Commission on International Trade Law

Forty-first session

Summary record of the 880th meeting
Held at Headquarters, New York, on Thursday, 26 June 2008, at 10 a.m.

Chairperson: Mr. Illescas ..... (Spain)

Contents

Finalization and approval of a draft convention on contracts for the international carriage of goods wholly or partly by sea (*continued*)

Adoption of the report of the Commission

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

Any corrections to the record of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

08-40081 (E)

The meeting was called to order at 10.15 a.m.

Finalization and approval of a draft convention on contracts for the international carriage of goods wholly or partly by sea (*continued*) (A/CN.9/645; A/CN.9/XLI/CRP.1/Add.1-4 and CRP.8)

Draft preamble

1. **The Chairperson** invited the Commission to consider the draft preamble to the draft convention contained in A/CN.9/XLI/CRP.8.

First preambular paragraph

2. **Mr. Morán Bovio** (Spain) thanked the Commission secretariat for its prompt drafting of a preamble to the draft convention, in response to his delegation's request, and expressed his complete satisfaction with the text. The preamble, which would facilitate the interpretation of the convention and shed light on the work of the Commission over the previous six years, might require some minor changes, which could be handled by the drafting group.

3. The fact that the first paragraph of the draft preamble had appeared in other United Nations conventions did not diminish its validity in the least, as it clearly stated the ideals of the Organization that informed the Commission's work. Therefore, he fully supported the retention of the first preambular paragraph as drafted.

4. **Mr. Sharma** (India) suggested that "reaffirming their belief" should be changed to read "reaffirming the belief", as the belief being expressed was universal and therefore not limited to States parties.

5. **Ms. Anki Dosso** (Benin) proposed that "friendly relations among States" should be changed to read "trade relations among States".

6. **Mr.** Ibrahima Khalil **Diallo** (Senegal) expressed his satisfaction with the text as it stood. Although the suggestion made by the representative of India had some merit, the first paragraph should be retained in its current form.

7. **The Chairperson** took it that the Commission approved the first paragraph as drafted.

8. *The first preambular paragraph was approved.*

Second preambular paragraph

9. **Ms. Hu** Shengtao (China) proposed that in the phrase "international trade law, in reducing or removing legal obstacles to the flow of international trade", the word "trade" should be replaced by the word "transportation", since the draft convention specifically dealt with transportation law, rather than trade law in general. The proposed change would also underscore the relationship between transportation and international trade development.

10. **Mr. Sekolec** (Secretary of the Commission) welcomed the Commission's comments and explained that the wording of the second paragraph had been taken from General Assembly resolution 48/34.

11. **Ms. Anki Dosso** (Benin) suggested that the second paragraph should state that the progressive harmonization and unification of international trade law contributed not only to universal economic cooperation but also to development.

12. **Ms. Carlson** (United States of America) partially endorsed the Chinese proposal. She noted that if the word "trade" was replaced by the word "transportation" only the first time it appeared in the paragraph, but not the second, the text would then reflect the point the representative of China had made about the relationship between transportation and trade.

13. **Mr. Morán Bovio** (Spain) said that he supported the retention of the second paragraph in its current form. The first paragraph introduced in very broad terms the ideals that had inspired the convention. The next logical step was to articulate in general terms the need to remove obstacles to international trade through harmonization and unification of international trade law; specific references to transport law followed in the third paragraph.

14. **Mr. Sato** (Japan) said that he favoured retention of the paragraph as drafted, as it fit into the coherent internal logic of the draft preamble.

15. **Mr. Maradiaga** (Honduras) said that he agreed with the remarks of the representative of Spain and supported retention of the current wording, which was systematic and coherent.

16. **Mr. Berlingieri** (Italy) requested clarification on whether General Assembly resolution 48/34 dealt with trade law or transportation law. If the latter was the case, no changes should be made to the second

paragraph. However, if that resolution dealt with trade law, he disagreed with the view of the representative of Japan on the coherence of the second paragraph within the draft preamble. Replacing the first use of the word "trade" with the word "transportation" made sense because the sentence would then convey the idea of the effect of international transportation law on the flow of international trade.

17. **The Chairperson** clarified that General Assembly resolution 48/34 related to the Hamburg Rules.

18. **Mr. Elsayed** (Egypt) proposed that the phrase "legal obstacles" should be expanded to read "legal and procedural obstacles". He also requested a correction to the Arabic version.

19. **Mr. Chong** (Singapore) said that his delegation supported the Chinese proposal. He could not agree with the argument put forward by the representative of Japan; it was logical for the second paragraph to speak to the general concept of progressive harmonization and unification of international transport law, examples of which were then cited in the third paragraph.

20. **Mr. Sandoval** (Chile) said that he supported the retention of the second paragraph as drafted, as it indeed referred to the progressive harmonization and unification of international trade law. Transport law was only a subset of international trade law, which the Commission had been working to develop for several years. Specific references to transport in the third paragraph indicated the logical progression behind the structure of the draft preamble in its current form.

21. **Ms. Sobekwa** (South Africa) said that she supported the proposals made by the representatives of China and the United States because the draft convention specifically dealt with transport law.

22. **Ms. Czerwenka** (Germany) said that her delegation preferred to retain the current text. Although transportation law was indeed part of trade law, the third and sixth paragraphs went on to refer specifically to carriage of goods and its importance in promoting trade, addressing the concerns expressed by some delegations.

23. **Mr. Imorou** (Benin) said that it was logical for the second paragraph to refer specifically to transport, as the first paragraph dealt with international trade. Therefore, he endorsed the suggestions made by the representatives of China and the United States.

24. **Mr. Sharma** (India) said that he favoured retention of the current text in light of its relationship to the Hamburg Rules.

25. **Mr. Essigone** (Gabon) said that it was much wiser to retain the current text, given that transport law was an integral part of trade.

26. **Mr. Serrano Martínez** (Colombia) noted that the explanation of the origin of the second preambular paragraph should suffice to support retention. In any case, international trade law encompassed transport law.

27. **Mr. Honka** (Observer for Finland) said that his delegation had no strong views on the second paragraph but supported retention of the text as drafted.

28. **Mr. Sekolec** (Secretary of the Commission) said that, since the wording of the second paragraph had been taken directly from the General Assembly resolution, which existed in Arabic, he would present the Arabic version of the resolution to the representative of Egypt in order to address his concerns. If any additional improvement proved necessary, it would be handled by the Secretariat.

29. **The Chairperson** said that, since there was insufficient support for the suggested amendments, he took it that the Commission wished to approve the second paragraph as it stood.

30. *The second preambular paragraph was approved.*

Third preambular paragraph

31. **Mr. Imorou** (Benin) said that the third paragraph, which made a historical reference to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading and its amending Protocols, should also mention its additional Protocols.

32. **The Chairperson** suggested the deletion of the word "amending" in order to avoid an unwieldy sentence.

33. *The third preambular paragraph, as amended, was approved.*

Fourth preambular paragraph

34. **Ms. Anki Dosso** (Benin) said that it would be more logical to reverse the order of the verbs "modernize" and "consolidate".

35. *The fourth preambular paragraph, as amended, was approved.*

Fifth preambular paragraph

36. **Mr. Berlingieri** (Italy), supported by **Mr. Elsayed** (Egypt) and **Mr. Delebecque** (France), proposed that "various modes of transport" should be replaced by "other modes of transport".

37. *The fifth preambular paragraph, as amended, was approved.*

Sixth preambular paragraph

38. *The sixth preambular paragraph was approved.*

39. *The draft preamble as a whole, as amended, was approved in substance and referred to the drafting group.*

Adoption of the report of the Commission

Chapter III (Finalization and approval of a draft convention on contracts for the international carriage of goods wholly or partly by sea)
(A/CN.9/XLI/CRP.1/Add.1-16)

Introduction and consideration of draft articles, chapters 1 and 2 of the draft convention
(A/CN.9/XLI/CRP.1/Add.1)

40. **Ms. Downing** (Australia) said that she wished the position of her delegation on draft article 5 to be more fully reflected. She accordingly proposed that the first sentence of paragraph 11 of A/CN.9/XLI/CRP.1/Add.1 should be placed at the end of paragraph 10, supplemented by the following: "One delegation proposed new subparagraphs 1 (d) and (e) and new paragraph 3 to try to achieve this". Paragraph 11 would then begin with the words "It was pointed out ...".

41. *It was so decided.*

42. **Ms. Czerwenka** (Germany) said that, since the proposal referred to in the first sentence of paragraph 12 concerning draft article 5 had been made by her delegation, she wished it to reflect more accurately Germany's position. The words "Another proposal was to limit ..." should be replaced by "Another proposal was to open the possibility for limiting ...".

43. *It was so decided.*

44. **Mr. M'inoti** (Kenya) pointed out an inconsistency in the draft report, which referred in some cases to the Commission and in others to the Commission Group, for example, in paragraph 14.

45. **The Chairperson** said that it should refer in every case to the Commission and would be corrected.

46. *The section of the draft report on the Introduction and on consideration of draft articles, chapters 1 and 2 of the draft convention and related definitions (A/CN.9/XLI/CRP.1/Add.1), as amended, was adopted.*

Consideration of draft articles, chapter 2 (continued), together with draft article 82, and chapters 3 and 4 of the draft convention and related definitions
(A/CN.9/XLI/CRP.1/Add.2)

47. **Ms. Downing** (Australia) said that, in paragraph 7 of A/CN.9/XLI/CRP.1/Add.2, her delegation would appreciate the insertion after the first sentence of the following words: "One State reiterated its consistent and strong opposition to the inclusion of draft article 82 in its current form", and the addition, at the end of the paragraph, of the following sentence: "There was also a proposal to allow States to make a reservation with respect to draft article 82".

48. *It was so decided.*

49. **Ms. Talbot** (Observer for New Zealand) said that, in view of the importance of the compromise reached at the twenty-first session of the Working Group, alluded to in the penultimate sentence of paragraph 9 and the last sentence of paragraph 12, it might be appropriate to insert explicit cross-references for the sake of greater clarity.

50. *It was so decided.*

51. *The section of the draft report on consideration of draft articles, chapter 2 (continued), together with draft article 82, and chapters 3 and 4 of the draft convention and related definitions (A/CN.9/XLI/CRP.1/Add.2), as amended, was adopted.*

The meeting was suspended at 11.35 a.m. and resumed at 12.15 p.m.

Consideration of draft articles, chapter 4 (continued) of the draft convention (A/CN.9/XLI/CRP.1/Add.3)

52. **Ms. Czerwenka** (Germany), supported by **Mr. Schelin** (Observer for Sweden) and **Mr. Sato** (Japan), said that paragraphs 2 to 4 of A/CN.9/XLI/CRP.1/Add.3 reflected only one of the two interpretations of the meaning of draft article 12,

paragraph 3, discussed by the Commission. Accordingly, she proposed deleting the phrase "but that the carrier was prevented from limiting its period of responsibility to exclude the time after initial loading of the goods, or prior to final unloading of the goods" from paragraph 2. In addition, paragraphs 3 and 4 should be redrafted to read as follows:

> "3. Another interpretation was that draft article 12, paragraph 3, did not modify paragraph 1 but only aimed at preventing the carrier, even if it had concluded an agreement on the basis of draft article 14, paragraph 2, from limiting its period of responsibility to exclude the time after initial loading of the goods, or prior to final unloading of the goods. To that end, a suggestion was made that paragraph 3 could be moved to a position in the text immediately following paragraph 1, and that it could also be helpful to replace the opening phrase of paragraph 3 'For the purposes of determining the carrier's period of responsibility' by the words 'Subject to paragraph 1'. Some support was expressed for that possible approach.
>
> 4. There was agreement in the Commission that the different views that had been expressed on the possible interpretation of paragraph 3 illustrated that there could be some ambiguity in the text. However, the Commission was of the view that it could be possible to clarify the text so as to ensure a more uniform interpretation. The Commission agreed that revised text for the resolution of the apparent ambiguity in paragraph 3 should be considered, and that it would delay its approval of draft article 12 until such efforts had been pursued."

53. **Mr. Mollmann** (Observer for Denmark), supported by **Ms. Carlson** (United States of America) said that the amendments proposed by the representative of Germany gave the erroneous impression that there had been three different interpretations of draft article 12, paragraph 3. The proposed deletion of the last part of the second sentence of paragraph 2 gave particular cause for concern and his delegation therefore opposed the German proposal.

54. **The Chairperson** said that, if he heard no further objections, he would take it that the majority of the Commission wished to adopt the amendments proposed by the representative of Germany.

55. *It was so decided.*

56. **Mr. Elsayed** (Egypt) pointed out that paragraph 12 of the draft report did not reflect the Commission's final decision to delete draft article 13.

57. **Ms. Lannan** (International Trade Law Division) said that the Commission's final decisions on draft articles 12 and 13 were reflected in the section of the draft report contained in A/CN.9/XLI/CRP.1/Add.9.

58. **Ms. Downing** (Australia), referring to paragraph 15, said that, in order to reflect her delegation's position on draft article 14, the following should be inserted after the second sentence: "Concern was also expressed that a traditional responsibility of the carrier was now being left to freedom of contract".

59. *It was so decided.*

60. **Mr. Delebecque** (France), referring to paragraph 16, proposed inserting the following after the first sentence: "It was noted that draft article 83, subparagraph (b), could apply to cases in which the shipper assumed responsibility for handling in liner transportation".

61. *It was so decided.*

62. *The section of the draft report on consideration of draft articles, chapter 4 (continued), of the draft convention (A/CN.9/XLI/CRP.1/Add.3) as amended, was adopted.*

Consideration of draft articles, chapter 4 (continued) and chapter 5 of the draft convention
(A/CN.9/XLI/CRP.1/Add.4)

63. **Mr. Sato** (Japan), referring to the final sentence of paragraph 11 of A/CN.9/XLI/CRP.1/Add.4 concerning draft article 18, said that, in the interests of clarity, the words "in the Working Group" should be inserted after the words "in paragraph 3".

64. *It was so decided.*

65. **Mr. Elsayed** (Egypt) recalled that a number of African and Arab States had proposed amendments to paragraph 2 in addition to the deletion of paragraph 3 of draft article 18. In order to reflect that discussion, the first sentence of paragraph 9 of A/CN.9/XLI/CRP.1/Add.4 should begin: "The Commission heard strong expressions of support for

proposed amendments to draft article 18, paragraph 2, as well as for the deletion of draft paragraph 3".

66. *It was so decided.*

67. *The section of the draft report on consideration of draft articles, chapter 4 (continued) and chapter 5 of the draft convention (A/CN.9/XLI/CRP.1/Add.4), as amended, was adopted.*

The meeting rose at 1.05 p.m.